

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

In the Matter of:

GENEVA RUBBER CO., INC.
5449 BISHOP ROAD
GENEVA, OHIO 44041

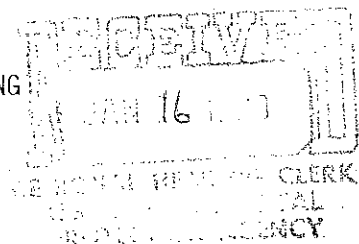
Respondent.

Docket No. EPCRA-019-1990

CIVIL COMPLAINT
and
NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

GENERAL ALLEGATIONS



This is a civil administrative action instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 et seq. (also known as the Emergency Planning and Community Right-to-Know Act of 1986, [hereinafter "EPCRA"]) and Sections 22.01(a)(8) and 22.40 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 54 Fed. Reg. 21174, May 16, 1989, to be codified at 40 C.F.R. §§22.01(a)(8) and 22.40. The Administrator has delegated this authority under EPCRA to the Regional Administrator and redelegated this authority to the Director, Environmental Sciences Division, Region V, United States Environmental Protection Agency ("U.S. EPA").

1. The Complainant is William H. Sanders III, Director Environmental Sciences Division, Region V, U.S. EPA.
2. Respondent is Geneva Rubber Company, Inc, which is and was at all times relative to this Complaint a corporation incorporated under the laws of

the State of Ohio and authorized to do business in the State of Ohio with a place of business at 5449 Bishop Road, Geneva, Ohio 44041 (the "facility").

3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§11023 and 11048, U.S. EPA promulgated the Toxic Chemical Release Reporting Community Right-to-Know Rule, 40 C.F.R. Part 372.

4. Section 313 of EPCRA, 42 U.S.C. §11023 and 40 C.F.R. Part 372 require that owners or operators of a facility which has 10 or more full-time employees and a Standard Industrial Classification Code between 20 and 39, and which manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. §11023(c), and listed at 40 C.F.R. §372.65 in amounts that exceed the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. §11023(f), must complete and submit to the Administrator of U.S. EPA and the State no later than July 1, 1988, and each July 1, thereafter, a chemical release form published pursuant to Section 313(g) of EPCRA, 42 U.S.C. §11023(g), for each chemical, reflecting releases during the previous calendar year.

5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. §11023(g), U.S. EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) ("Form R") at 40 C.F.R. §372.85.

6. Section 313(a) of EPCRA, 42 U.S.C. §11023(a), requires that the Form R be used by all persons required to report pursuant to Section 313(b) of EPCRA, 42 U.S.C. §11023(b).

7. Respondent is an owner or operator of a "facility" as that term is defined by §329(4) of EPCRA, 42 U.S.C. §11049(4), and 40 C.F.R. §372.3.

8. Respondent's facility has 145 "full-time employees" as defined by 40 C.F.R. §372.3.

9. Respondent's facility is covered by Standard Industrial Classification Code 3069, which falls within Standard Industrial Classification Codes 20 through 39.

10. During the calendar year 1987, Respondent's facility "otherwise used", as defined by 40 C.F.R. §372.3, toxic chemicals listed at 40 C.F.R. §372.65 in quantities exceeding the thresholds for reporting set forth in Section 313(f) of EPCRA, 42 U.S.C. §11023(c) and at 40 C.F.R. §372.25.

11. On March 23, 1989, a representative of the U.S. EPA conducted a consensual inspection of Respondent's facility located at 5449 Bishop Road, Geneva, Ohio 44041.

COUNT 1

12. Paragraphs 1 through 11 of this Complaint are incorporated by reference herein.

13. The established reporting threshold for a chemical identified by Section 313(c) of EPCRA, 42 U.S.C. §11023(c), and listed under 40 C.F.R. §372.65, that is otherwise used, as defined by 40 C.F.R. §372.3, is 10,000 pounds per calendar year. Section 313(f) of EPCRA, 42 U.S.C. §11023(f), and 40 C.F.R. §372.25(b).

14. During the calendar year 1987, Respondent otherwise used methylene chloride, CAS No. 75-09-2, a chemical identified in Section 313(c) of EPCRA, and listed at 40 C.F.R. §372.65, in a quantity of approximately 34,000 pounds. Use of this quantity of methylene chloride exceeds the threshold for reporting.

15. Respondent was required to submit to the Administrator of the U.S. EPA and the State of Ohio a Form R for methylene chloride on or before July 1, 1988.

16. Respondent failed to submit a Form R for methylene chloride to the Administrator of U.S. EPA and the State of Ohio on or before July 1, 1988, and had not submitted said form as of the date of inspection, March 23, 1989.

17. Respondent's failure to timely submit a Form R for methylene chloride is a violation of Section 313 of EPCRA, 42 U.S.C §11023.

COUNT II

18. Paragraphs 1 through 11 of this Complaint are incorporated by reference herein.

19. The established reporting threshold for a chemical identified by Section 313(c) of EPCRA, 42 U.S.C. §11023(C), and listed under 40 C.F.R. §372.65, that is otherwise used, as defined by 40 C.F.R. §372.3, is 10,000 pounds per calendar year. Section 313(f) of EPCRA, 42 U.S.C. §11023(f), and 40 C.F.R §372.25(b).

20. During the calendar year 1987, Respondent otherwise used toluene, CAS No. 108-88-3, a chemical identified at Section 313(c) of EPCRA and listed

at 40 C.F.R. §372.65, in a quantity of approximately 14,500 pounds. Use of this quantity of toluene exceeds the threshold for reporting.

21. Respondent was required to submit to the Administrator of the U.S. EPA and the State of Ohio a Form R for toluene on or before July 1, 1988.

22. Respondent failed to submit a Form R for toluene to the Administrator of the U.S. EPA and the State of Ohio on or before July 1, 1988, and had not submitted said form as of the date of inspection, March 23, 1989.

23. Respondent's failure to timely submit a Form R for toluene is a violation of Section 313 of EPCRA, 42 U.S.C §11023.

PROPOSED CIVIL PENALTY

Section 325(c) of EPCRA, 42 U.S.C. §11045(c), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313, 42 U.S.C. §11023. Based upon the violations cited in this Complaint, the Complainant proposes that Respondent be assessed the following civil penalties:

COUNT I

Failure to submit a Toxic Chemical Release Inventory Reporting form (Form R) for substance, methylene chloride

CAS No. 75-09-2 \$5,000

COUNT II

Failure to submit a Toxic Chemical Release Inventory Reporting form (Form R) for substance, toluene

CAS No. 108-88-3 \$5,000

TOTAL PROPOSED CIVIL PENALTY \$10,000

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent may request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. The hearing, if requested, will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (45 Fed. Reg. 24360) ("Consolidated Rules"). A copy of the Consolidated Rules accompanies this Complaint.

To avoid being found in default (which constitutes an admission of all facts alleged in the complaint and a waiver of the right to a hearing) and having the above-cited penalty assessed without further proceedings, you must file a written Answer within twenty (20) days of your receipt of this Complaint. Your Answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which you have any knowledge. (If you have no knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny an allegation constitutes an admission); (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). A denial of material fact or assertion of an affirmative defense will be considered a request for a hearing. The answer must be sent to:

Beverly Shorty
Hearing Clerk (5MF-14)
United States Environmental
Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

Please send a copy of the Answer and all other documents which you file in this action to David M. Dabertin, the attorney assigned to represent U.S. EPA in this matter:

David M. Dabertin, Attorney
Office of the Regional Counsel
(5CA-TUB-3)
230 South Dearborn Street
Chicago, Illinois 60604

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may confer informally with Mr. Dabertin to discuss the facts of this case, or amount of the proposed penalty, and the possibility of settlement. Mr. Dabertin may be contacted at (312) 886-0566. An informal settlement conference does not, however, affect your obligation to file a written Answer to the Complaint.

U.S. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with you in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by U.S. EPA and yourself would be binding as to all terms and conditions specified therein upon signature by the Regional Administrator.

Please be advised that the Consolidated Rules prohibit any ex parte (unilateral) discussion of the merits of any action with the Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

PAYMENT OF PENALTY

Instead of filing a written Answer, requesting a hearing or requesting an informal settlement conference, you may choose to pay the proposed penalty. Such payment must be made by sending cashier's or certified check in the amount of the penalty assessed in this Complaint to the address identified below. Your check must be payable to the Treasurer, United States of America and sent to:

U.S. Environmental Protection Agency
Region V,
P.O. Box 70753
Chicago, Illinois 60673

A copy of the check must be sent to:

Branch Secretary
Pesticides and Toxic
Substances Branch (5SPT-7)
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

A transmittal letter identifying this Complaint shall accompany the remittance and the copy of the check. Payment of the civil penalty alone does not satisfy your legal obligation to file a complete and accurate

Toxic Chemical Release Inventory Reporting Form, Form R, U.S. EPA Form 9350-1 (1-88) for each toxic chemical identified in this Complaint. If you choose to remit the proposed penalty, you are still under a legal obligation to submit complete and accurate Forms R to both:

U.S. Environmental Protection Agency
P.O. Box 70266
Washington, D.C. 20024-0226
Attn: Toxic Chemical Release Inventory

and

Cindy DeWulf
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, Ohio 43215
(614) 644-2286

Failure or refusal to file the Forms R may subject you to additional civil penalties of up to \$25,000 per day of violation. Failure to file an Answer or respond to this Civil Complaint may result in a default order being issued for collection of the full civil penalty.

William H. Sanders III
William H. Sanders III, P.E.
Director, Environmental Sciences Division
U.S. Environmental Protection Agency
Region V
Chicago, Illinois 60604

Date: 1/11/90

Geneva Rubber Company, Inc.
Geneva, Ohio

CERTIFICATE OF SERVICE

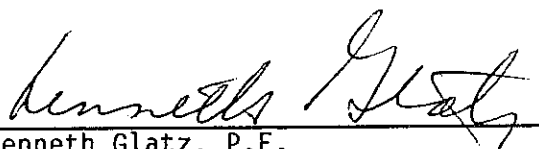
I certify that the original and one copy of the Complaint was filed this day with the Regional Hearing Clerk, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, and that a true copy was sent to the Respondent, along with the Consolidated Rules of Practice, 40 C.F.R. Part 22 and a Summary of the Penalty Policy for EPCRA at the following address:

Joseph P. Tulley
38021 Euclid
Willoughby, Ohio 44094

Registered Agent for:

Geneva Rubber Company, Inc.
5449 Bishop Road
Geneva, Ohio, 44041

Dated: 1/16/90


Kenneth Glatz, P.E.
Environmental Sciences Division
U.S. Environmental Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604